# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1921

## No. [redacted]147

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 5, 1920.

(27,928)

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# SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1920.**

# No. 571.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MAY 5, 1921.

1 Court of Claims.

No. 33290.

THE LOUISVILLE & NASHVILLE

vs.

THE UNITED STATES.

I. *History of Proceedings.*

On June 1, 1916, the claimant filed its original petition.

On December 14, 1916, the defendant filed a demurrer to said petition.

On January 11, 1917, the demurrer was withdrawn on motion made therefor by defendants in open court.

On July 26, 1917, by leave of court, the claimant filed a supplemental petition.

On February 12, 1919, by leave of court, the claimant filed an amended and supplemental petition. Said petition is as follows:

II. *Amended and Supplemental Petition.*

Filed February 12, 1919.

Petitioner by leave of court files this its amended and supplemental petition, to take the place of its original petition and a supplemental petition heretofore filed, and says:

I.

Petitioner is a corporation organized under the laws of the State of Kentucky, owning and operating a system of railroads in the States of Kentucky, Indiana, Illinois, Virginia, Tennessee, Georgia, Alabama, Florida, Mississippi and Louisiana. Two of petitioner's lines of railroad, extending respectively from Decatur, in the State of Alabama, to Pensacola, in the State of Florida, were built with aid of lands granted to divers predecessors in title to petitioner by acts of Congress approved May 17, 1856; June 3, 1856; March 3, 1857; April 10, 1869; March 3, 1871; March 3, 1875; and March 3, 1879 (11 Stats. L., pp. 15, 17, 200; 16 Stats. L., p. 580; 17 Stats. L., p. 340). None of petitioner's other lines was aided by any
2 grant of lands of the United States.

Petitioner has at all times borne true allegiance to the Government of the United States and never in any way aided, abetted or gave encouragement to rebellion against said Government.

II.

The acts of Congress granting said lands each contained a provision, either in these identical words or other equivalent thereto, that the railroads to be built by such aid should "be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States." Under decisions of the United States Supreme Court and of this court railroad companies, as to roads aided by land-grants of the above tenor, were and are entitled to charge, for transportation of troops or property of the United States, only fifty per cent of the amounts which would accrue under the regular and duly published tariffs, for the transportation of passengers or freight, open to the public at large; and, by agreements between the railroad companies and the United States, in effect before and at the times hereinafter mentioned, the rates of railroad lines not land-aided, applying to troops or property of the United States, have been equalized with the lowest rates accruing on any land-aided line which was a feasible and competing route between the same terminal points. Petitioner was not obliged by law, and it has never agreed, to transport civilian employees, officers or agents of the United States, whether employed under direction of officers of the army or otherwise, at fifty per cent of, or at any reductions whatever in the amounts that accrued by said ordinary tariffs.

3

III.

During the period from June 1, 1910, to January 1, 1918, petitioner transported over its lines of railroad, on many occasions, officers, agents or employees of the United States Government who did not belong to and were not connected with any organizations of troops. The details of said movement are set forth in bills of particulars heretofore submitted in this case.

IV.

In making payment to petitioner for said movements the disbursing officers of the United States applied, with respect to land-aided roads, or those whose rates were equalized with land-aided roads, not the full rates published in said tariffs, but only fifty per cent of the same. The aggregate amount of said reductions of petitioner's compensation is nine thousand dollars and forty-one cents ($9,000.41).

Petitioner prays judgment against the United States in said sum of nine thousand dollars and forty-one cents ($9,000.41); no part thereof having been paid and petitioner's rights thereto not having been assigned wholly or in part.

THE LOUISVILLE AND NASHVILLE
RAILROAD COMPANY,
By BENJ. CARTER, *Its Attorney in Fact.*

4 DISTRICT OF COLUMBIA:

Before me, Henry W. Samson, a Notary Public in and for said District, Benj. Carter, whose name is written as a part of the signature to the foregoing petition, made oath on this eleventh day of February, 1919, that the allegations of said petition are true to the best of his knowledge, information and belief.

BENJ. CARTER.

Subscribed and sworn to before me the day above written.

HENRY W. SAMSON,
*Notary Public.*

5 & 6 III. *Further History of Proceedings.*

On April 21, 1919, this case was argued and submitted by Mr. Benjamin Carter, for the claimant, and by Mr. Horace S. Whitman, for the defendant.

On May 5, 1919, the court filed the following order remanding the case to the calendar:

*Order.*

It is ordered by the court that this case be and it is hereby remanded to the Calendar for further proof. (See Memorandum.)

*Memorandum.*

The suit was brought in 1916. An amendment was later filed, and thereafter a supplemental petition was filed. The stipulation does not classify the several employees, officers or men according to the times of the filing of the several petitions. The record does not enable the court to ascertain what officers, enlisted men, applicants for enlistment, or others were transported prior to June 1, 1916; nor is there a classification subsequent thereto except the classification for the whole period shown by the stipulation. That the parties may have an opportunity (by stipulation or otherwise) to show the classes of persons transported and the number of each prior to 1916, when the original petition was filed, and similarly as to subsequent dates, the cause is remanded.

IV. *Argument and Submission on Order of Remand.*

On October 29, 1919 this case was argued and submitted on order of remand by Mr. Benjamin Carter, for the claimant, and by Mr. Horace S. Whitman, for the defendant.

7 V. *Findings of Fact, Conclusion of Law, and Memorandum.*

Entered Dec. 1, 1919.

This case having been heard by the Court of Claims the court, upon the evidence, makes the following

Findings of Fact.

I.

The plaintiff is a corporation organized under the laws of the State of Kentucky, operating a system of railroads in the States of Kentucky, Indiana, Illinois, Virginia, Tennessee, Georgia, Alabama, Florida, Mississippi, and Louisiana. Two of plaintiff's lines of railroad were built with the aid of lands granted to divers predecessors in title to plaintiff by acts of Congress passed in the years 1856, 1857, 1869, 1871, 1875, and 1876. The acts of Congress granting said lands, which aided the construction of said two lines of railroad, each contained a provision as follows, to wit: "That the railroads to be built by such aid should be and remain public highways for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States."

II.

Under a decision of the Supreme Court of the United States it was held that railroad companies were entitled to be paid for the use of their equipment while transporting property and troops of the United States; and the Army appropriation acts during the periods covering the transportation involved in this suit provided that the land-grant roads were to receive only 50 per cent of the regular tariff rates open to the public at large; and by agreements between the railroad companies and the United States, in effect before and at the times hereinafter mentioned, the rates of railroad lines not land aided applying to property and troops of the United States had been equalized with the lowest rates accruing on any land aided lines which were feasible and competing routes between the same terminal points.

8 III.

During the period from June 1, 1910, until January 1, 1918, the plaintiff transported over its lines of railroad, upon transportation requests issued by the Navy Department of the United States, and by the Treasury Department of the United States, certain persons belonging to the following classes, to wit:

1. Enlisted men of the Navy and Marine Corps.
2. Officers of the Navy and Marine Corps.
3. Discharged enlisted men of the Navy.

4. Applicants for enlistments in the Navy and Marine Corps.
5. Men in the Naval Reserve.
6. Men in the Naval Militia.
7. Men in the Naval Auxiliary Service.
8. Civil employees of the Navy Department.
9. Police officer.
10. Coast Guards.

For all of the transportation here involved (except the Coast Guard) bills were rendered by the plaintiff company at land-grant rates. They were presented at divers times between June 1, 1910, and January 1, 1918, and numbered approximately 175. A portion thereof, about 34 in number, were presented to and paid by disbursing officers, and the remainder were presented to the proper auditor for direct settlement. All were upon forms prescribed for use in making claims for transportation subject to land-grant deduction and the claim as to each item stated the full commercial rate, the amount of land-grant deduction and the "amount claimed," the latter amount being arrived at by subtracting the land-grant deduction from the full commercial rate. They were all certified by the plaintiff company as "correct and just" and were paid in the amounts claimed except that in a few instances the auditor made minor corrections as to the amount of land-grant and corresponding deductions. The payments were all accepted; there was then no contention that the transportation involved was not subject to land-grant rates; there was no protest against the settlements on that ground and there was no protest at all except in a few instances as to which it was contended that land-grant rates were not properly to be applied as against party rate and mileage transportation. It had been the uniform practice of the railroad companies, plaintiff included, for many years to present their claims for classes of transportation here involved at land-grant rates.

For the Coast Guard tranportation here involved the plaintiff presented its claims on the prescribed form for transportation of passengers "no land grant involved," and made its claims at full commercial rates, from which the auditor made land-grant deductions when involved and to the extent thereof disallowed the claims and payment was made accordingly. It is not shown that plaintiff protested settlement at land-grant rates.

## IV.

The difference between the amount so paid the plaintiff for such transportation at land-grant fares and the tariff rate for the public without land-grant deductions was $6,521.04, the difference
9 with respect to each of the several classes of persons so transported being as follows:

| | |
|---|---|
| 1. Enlisted men of the Navy and Marine Corps | $4,098.06 |
| 2. Officers of the Navy and Marine Corps | 36.47 |
| 3. Discharged enlisted men of the Navy | 14.83 |
| 4. Applicants for enlistment in the Navy and Marine Corps | 1,654.23 |
| 5. Men in the Naval Reserve | 50.08 |
| 6. Men in the Naval Militia | 280.80 |
| 7. Men in the Naval Auxiliary Service | 15.64 |
| 8. Civilian employees of the Navy Department | 116.28 |
| 9. Police officer | 1.95 |
| 10. Coast Guards | 252.70 |

## V.

At the time the plaintiff transported the men of the Naval Reserve, the Naval Auxiliary service and the Naval Militia, the United States Government was at war with Germany, a state of war with that country having been declared by Congress.

### Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is not entitled to recover. It is ordered that the petition be, and it is hereby, dismissed. Judgment is rendered against the plaintiff in favor of the United States for the cost of printing the record in this cause, the amount thereof to be entered by the chief clerk and collected by him according to law.

### Memorandum.

As to all the items of the claim (except that for transportation of the Coast Guard) the court decides that the principles announced in Baltimore & Ohio R. R. Co., 52 C. Cls., 468, and Oregon-Washington Railroad & Navigation Co., decided May 5, 1919, are applicable. The plaintiff presented its bills for services to the Government's accounting officers or disbursing officers, and these bills were paid as rendered, with some corrections not material here. The plaintiff's bills made the land-grant deduction and made no claim that the charge for transportation was not subject to such deduction. It received the amount of its bills as rendered without protest, and, under the cases cited above, where the question is fully discussed, the court will not disturb the settlement.

As to the claim for transporting the Coast Guard a different question arises, because the plaintiff rendered its bills at full commercial rates without land-grant deductions and the deductions were made by the accounting officers and the plaintiff paid accordingly. It now claims the amount of the deductions so made.

Aside from the question above mentioned, the right of the plaintiff to recover depends on the construction to be given the phrase "troops of the United States" in the land-grant acts. Does the phrase mean that under the land-grant acts the railroads are only

obliged to transport the land forces in the service of the United States, or does it mean that the railroads are obliged to transport all the military forces of the United States, whether they
10 serve on land or water, at land-grant rates established and agreed upon by the parties?

This court in the Alabama Great Southern R. R. Case, 49 C. Cls., 522, where the question was whether the National Guard were troops of the United States, said (p. 537):

"The meaning of the act under which the claimant must transport troops is not to be restricted to the Regular Army, nor can it be extended to include the National Guard when not in the service of the United States."

In the case of the Union Pacific Railroad Company, 52 C. Cls., 226 (which was affirmed by the Supreme Court of the United States, October term, 1918), a case in which the court was construing the meaning of the phrase "troops of the United States," this court said:

"We think that the general rule applicable to all of these cases is that, in order to come within the provisions of the land-grant act, the persons transported should be a part of the military organization of the United States, and may in certain cases include the Naval Establishment, which, however, is not decided." (P. 223.)

It goes without saying that the Navy and the Marine Corps are parts of the military organization of the country. The Coast Guard is made "a part of the military forces of the United States" by the act of January 28, 1915, 38 Stat. 800. The transportation of the Coast Guard here involved was subsequent to that act.

If the claims did not come within the principle of the two cases first herein cited, this court would be disposed to hold that the following classes for which claims are made—namely, discharged enlisted men of the Navy, applicants for enlistment in the Navy and Marine Corps, civilian employees of the Navy Department, and police officers—are not "troops of the United States."

A majority of the court is of opinion that the term "troops" includes enlisted men of the Navy and Marine Corps, officers of the Navy and Marine Corps, Coast Guard, and also men in the Naval Reserve and Naval Militia and Naval Auxiliary Service in time of war. As to the men in the Naval Reserve and Naval Auxiliary Service, it appears that at the time the transportation service was rendered by the plaintiff the country was at war and that these men were in the service of the United States (39 Stat., 587). The Naval Militia transported was in the actual service of the United States at the time of its transportation.

11 VI. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the First day of December, A. D., 1919, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises find in favor of the defendants, and do order, adjudge and decree that the Louisville and Nashville Railroad Company, as aforesaid, is not entitled to recover and shall not have and recover any sum in this action of and from the United States; and that the petition herein be and it hereby is dismissed. By THE COURT.

VI. *Claimant's Motion to Set Aside Judgment and to Amend Findings of Fact.*

Filed January 29, 1920.

Claimant by its attorney moves that the court will set aside the judgment rendered heretofore, to-wit on the 1st day of December, 1919, and will grant a new trial of the case. For grounds of this motion it says:

1. The judgment is contrary to the evidence.

2. The judgment is inconsistent with the law applicable to the facts as proved and to the findings of fact.

3. The decision and judgment, in holding that claims here asserted were waived by presentation of the bills described in the findings of fact and by failure to make protest when receiving payment from disbursing officers of the Government, ignores the fact that six decisions had been rendered previously by the Comptroller of Treasury under which no more than land-grant rates of transportation would have been paid, if claimed, for the classes of passengers concerned in the bills referred to in this suit (2 Compt. 415; 14 Compt. 778; 14 Compt. 543; 16 Compt. 70; 21 Compt. 276; 21 Compt. 751).

4. During the second and last argument of the case the
12 court, through the Chief Justice, announced that it was intended to render a judgment in claimant's favor, and therefore claimant's attorney informed the court that Comptroller's decisions (the same that are cited above) were referred to and explained in his brief as reasons why claimant's officers had not claimed and contended for full commercial rates, but, trusting to said declaration of the court, he did not discuss any of said decisions and its pertinence in this case.

Claimant also moves that the findings of fact filed by the court be amended by striking out all that relates to the character of bills presented by claimant's officers and the failure to make protest on receiving payment, viz: the two last paragraphs of Finding III. It says that the matter stated in said paragraphs has no relevance to the true issues of this case.

* * * * * * *

Respectfully submitted

BENJ. CARTER,
*Attorney for Plaintiff.*

The above motion was overruled by the court on March 15, 1920.

VII. *Claimant's Application for and Allowance of an Appeal.*

Claimant by its attorney shows to the court that this case involves more than $3,000; that on the 1st day of December, 1919, a judgment was rendered by the court dismissing the petition; that a motion thereafter was filed by claimant to set aside said judgment, but that on the 15th day of March, 1920, said latter motion was denied by the court. Claimant prays an appeal to the Supreme Court of the United States.

BENJ. CARTER,
*Attorney for Claimant.*

Filed June 8, 1920.

Ordered: That the above appeal be allowed as prayed for.

June 10, 1920.

By THE COURT.

13 Court of Claims.

No. 33290.

THE LOUISVILLE & NASHVILLE RAILROAD COMPANY

vs.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law and memorandum opinion filed by the court; of the judgment of the court; of the claimant's motion to set aside the judgment and to amend findings of fact, and order overruling same; of the claimant's application for and allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Sixth day of July, A. D., 1920.

[Seal of Court of Claims.]

F. C. KLEINSCHMIDT,
*Assistant Clerk Court of Claims.*

Endorsed on cover: File No. 27,928. Court of Claims. Term No. 571. The Louisville & Nashville Railroad Company, appellant, vs. The United States. Filed October 5th, 1920. File No. 27,928.